

**STATE OF MICHIGAN  
IN THE SUPREME COURT**

**ON APPEAL FROM THE COURT OF APPEALS  
Cavanagh, P.J., and Sawyer and O'Connell, JJ.**

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**JAMES LITTLE, CHERYL LITTLE, STEVEN RAMSBY,  
MARY KAVANAUGH, STANLEY W. THOMAS,  
NANCY G. THOMAS, MICHAEL McCLUSKY,  
GLADYS McCLUSKY, and ANN SKOGLUND,**  
Plaintiffs/Counter-Defendants/Appellants,

**v**

Supreme Court No. 121836  
Court of Appeals No. 227751  
Cheboygan CC No. 98-006480-CH

**BETTY H. HIRSCHMAN,**  
Defendant/Counter-Plaintiff/Appellee,

and

**GERALD W. CARRIER, SALLY ANN CARRIER  
JOHN P. VIAU, and GENEVIEVE GUENTHER VIAU,**  
Defendants/Counter-Plaintiffs,

and

**FRANCIS J. VanANTWERP, ELIZABETH VanANTWERP,  
MASON F. SHOUDER and JEAN ANN SHOUDER,**  
Defendants.

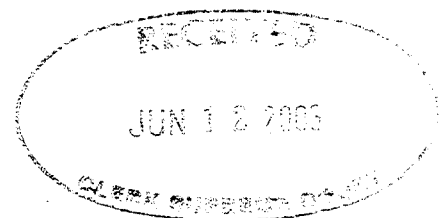
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**BRIEF ON APPEAL—APPELLEE**

**ORAL ARGUMENT REQUESTED**

Respectfully submitted,

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## COUNTERSTATEMENT OF QUESTION PRESENTED

**A dedication of land, by definition, must be to the public, and not to private individuals. A “private” dedication is therefore an oxymoron, and conveys no rights. Here, the plat provided that “the parks are hereby dedicated to the owners of the several lots.” Did the Court of Appeals correctly rule that this dedication conveyed no rights to Plaintiffs?**

Plaintiffs-Appellants answers, “No.”  
Defendant-Appellee answers, “Yes.”



## COUNTERSTATEMENT OF FACTS

### Nature of the Case:

This case, at its heart, concerns the right of a property owner to the use and enjoyment of her summer cottage on the water, without unreasonable interference and intrusion. Defendant-Appellee Betty Hirschman owns a cottage on property fronting both Mullett Lake and the Cheboygan River, and she has been coming to that cottage every summer for fifty years. Plaintiffs-Appellants filed this lawsuit, demanding a right to use the beach in front of Mrs. Hirschman's property. Their claim hinges on a private dedication contained in a ninety-year-old plat of a *dissolved* corporation, which purported to dedicate waterfront parks of fifty feet "more or less" to the owners of lots within the plat. Despite the ambiguous nature of the width of the dedicated areas, and despite the fact that the deeds of the lot owners conveyed property to the water's edge, and despite the illegal nature of a "private" dedication, the trial court allowed Plaintiffs the right to use the property in front of Mrs. Hirschman's cottage. The Court of Appeals correctly reversed the trial court, recognizing that a "private" dedication is a nullity, and conveys no rights.

### The Plat and the Dedicated Parks:

Mrs. Hirschman is a retired school teacher who owns a summer cottage on the shores of Mullett Lake, at the mouth of the Cheboygan River. Her property consists of

Lots 46 and 47 of the Plat of Yequagamak (a Native American phrase meaning “At the Mouth of the River”) which was platted in 1913.<sup>1</sup>

The plat itself depicts two strips of land—fifty feet “more or less”—that are designated as parks: Lakeside park on the shores of Mullett Lake, and riverside park on the banks of the Cheboygan River. The plat also depicts some streets, as well as several 12-foot-wide “alleys.” Because Mrs. Hirschman’s property is at the juncture of the river and the lake, an alley abuts Mrs. Hirschman’s property on both sides, and her property fronts both the lakeside and riverside parks, or frontage. The plat dedicates the streets and alleys to the use of the public, and dedicates the parks to the several lots owners of the plat (notably, not to the “use” of these owners), as follows:

#### DEDICATION

Know all men by these presents, that the Ye-Qua-Ga-Mak Company, a Michigan corporation, by C.E. Foote, its president, and H.A. Hirschman, its secretary, acting pursuant to a resolution of the board of directors of said corporation as proprietors, have caused the land embraced in the annexed plat to be surveyed, laid out, and platted to be known as the “Plat of Ye-Qua-Ga-Mak, Inverness Twp, Cheboygan Co Mich,” and that the streets and alleys as shown on said plat are hereby dedicated to the use of the public and the parks are hereby dedicated to the owners of the several lots.<sup>2</sup>

Between 1913, when the plat was recorded, and 1921 when the corporation was

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<sup>1</sup> Appellant’s Appendix, page 175a (Plat, Defendant’s Trial Exhibit B, Trial Transcript (“Tr.”, p 79).

<sup>2</sup> *Id.*

dissolved,<sup>3</sup> the plattors executed only a few deeds, to family and officers of the corporation, for lots within the plat, and none of them was to so-called “back-lot” owners.<sup>4</sup> In 1921, the corporation deeded all the remaining lots to the original proprietors, and those deeds expressly conveyed the lots to the water’s edge.<sup>5</sup> Thus, there were no “back-lot” owners, and each lot owner had access to the water by virtue of their conveyances, which went to the water’s edge upon the corporation’s dissolution. Any offer to dedicate the parks, even if valid, was revoked at that time. Indeed, most of the lots depicted on the plat were never used, and at the time of trial, there were only about 43 or 44 homes in the platted area.<sup>6</sup>

Betty Hirschman married her late husband, John Hirschman, in 1953, and they spent time every summer at the property which now belongs to Mrs. Hirschman.<sup>7</sup> At the time, it belonged to John Hirschman’s aunt, Bertine Bullock, who deeded the property to the Hirschmans in 1965.<sup>8</sup> Thus, Betty Hirschman has come to the cottage every summer for 50 years, and continues to do so.<sup>9</sup>

All of the plaintiffs in this case own homes that front the Cheboygan river rather

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<sup>3</sup> Appellee’s Appendix, page 15b (Certificate of Dissolution, Plaintiff’s Trial Exhibit 26, Tr, p 201-202).

<sup>4</sup> Appellee’s Appendix, pages 3b-6b (Defendant’s Trial Brief); Appellee’s Appendix, pages 16b-28b (Defendant’s Trial Exhibit M, Deeds, Tr, p 199-200).

<sup>5</sup> Appellee’s Appendix, pages 25b-27b (Defendant’s Trial Exhibit M, Liber 72, Pages 581-583).

<sup>6</sup> Appellant’s Appendix, page 202a (Tr, 299).

<sup>7</sup> Appellant’s Appendix, pages 178a-179a (Tr, 242-243).

<sup>8</sup> *Id.*

<sup>9</sup> The original owner of the property was Florence Foote, the first wife of one of the plattors, C.E. Foote. Florence, who was an invalid, had her choice of all the lots, and it is unlikely that she would have chosen these lots if she believed that the beach in front

than Mullett Lake. They are not “back-lot” owners, but each of them has water access directly in front of their lots. For example, Plaintiff Nancy Thomas’s predecessor was given a deed in 1937 from Anna Foote, widow of one of the original proprietors, that conveyed the land lying between Lot 43 and the river, including all riparian rights.<sup>10</sup> Indeed, the strip of land in front of the plaintiffs’ homes that adjoins the river, depicted on the plat as riverside park, is covered with trees and grass, as well as several encroachments into the park, placed there by the plaintiffs. For example, some of the plaintiffs installed boat wells along the river, thereby removing approximately half the width of the riverside park, or about twenty-five feet, and appropriating it for their own purposes.<sup>11</sup> One of the plaintiffs even placed an oar house among a mass of trees in the park area in front of his cottage.<sup>12</sup>

In contrast to the river side of the plat, the strip of land depicted on the plat as the lakeside park is a continuous sandy beach, beginning at the front of Mrs. Hirschman’s property at the mouth of the Cheboygan River and running west all along the lake to the end of the plat, and beyond. The principal issue in this case was whether the plaintiff had the right to use the beach in front of Mrs. Hirschman’s cottage and, if so, the permissible scope of that use.

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of them would serve as the community beach for the entire area.

<sup>10</sup> Appellee’s Appendix, page 31b (Defendant’s Trial Exhibit S, Deed, Liber 98 Page 598, Tr, 307-309).

<sup>11</sup> Appellee’s Appendix, pages 7b-8b, 9b (Tr, 45,46, 56 [Stanley Thomas]), 11b-12b (Tr, 93-94 [Mary Kavanaugh]).

<sup>12</sup> Appellee’s Appendix, pages 13b-14b (Tr, 158-159 [James Little]).

Permissive Use of the Hirschman Beach:

Until 1995 or 1996, the use of the beach in front of Betty Hirschman's property was not a source of dispute. Rather, the parties were very friendly and social with each other, and neighbors of the Hirschmans—including several of the plaintiffs—used the beach in front of the Hirschmans' home for swimming, sunbathing, and picnics.<sup>13</sup> This permissive use of the beach began when Bertine Bullock owned the lots in the 1960s. A single woman who was "very, very social and had lots of friends," Ms. Bullock never objected to any of her neighbors using the beach in front of her property, nor to the use of the alley next to her cottage to access the beach.<sup>14</sup> Indeed, a fire pit was built on the beach near the front of Ms. Bullock's cottage because she liked to have a corn roast once a year that she invited her neighbors to attend.<sup>15</sup>

This use of the beach area in front of lots 46 and 47 for invited social activity continued after Ms. Bullock transferred her interest in the lots to her nephew, Mrs. Hirschman's husband, in 1965. This use continued after Mr. Hirschman's death in 1985, when Mrs. Hirschman became the sole owner of the lots. Mrs. Hirschman considered the people who used the beach as her guests—her invited friends and neighbors.<sup>16</sup>

By 1994 or 1995, however, the use of the beach in front of Mrs. Hirschman's cottage began to change for the worse. There was an increase in the number of dogs

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<sup>13</sup> Appellant's Appendix, page 188a (Tr, 271); Appellee's Appendix, pages 10b (Tr, 88 [Mary Kavanaugh]), 29b-30b (Tr, 268-269 [Betty Hirschman]).

<sup>14</sup> Appellant's Appendix, pages 117a-118a, 188a (Tr, 59-60, 271).

<sup>15</sup> Appellant's Appendix, page 134a (Tr, 119).

on the beach, and people allowed them to run loose. Dog feces in the sand area where Mrs. Hirschman's grandchildren played became an increasing problem and required her to clean up the beach frequently.<sup>17</sup> Beer cans and broken glass were also a problem. As described by Mrs. Hirschman's son, William, the use of the beach changed so that people had bonfires at all hours of the night, with smoke trailing into the cottage; wave runners and other water craft would moor on the beach at will; the beach became littered with dirty diapers and beer bottles; and there was "fornication on the beach."<sup>18</sup>

Trial Court Rulings:

Mrs. Hirschman sought some relief from this state of affairs, and in 1997, along with several other lakefront lot owners,<sup>19</sup> filed an action against the Cheboygan County Road Commission, seeking to declare the public dedication of the alleys as abandoned due to lack of acceptance. On June 15, 1998, Cheboygan Circuit Court Judge Scott L. Pavlich issued a judgment declaring that the public had no interest in the alleys, because the public authority had never properly accepted the dedication.<sup>20</sup> Thus, the alleys reverted to the heirs of the original plattors.

Alleging that the defendants were attempting to use the judgment to preclude access to the alleys by other lot owners within the platted area, the plaintiffs filed a

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<sup>16</sup> Appellee's Appendix, pages 29b-30b (Tr, 268-269 [Betty Hirschman]).

<sup>17</sup> Appellant's Appendix, pages 183a-184a (Tr, 253-254).

<sup>18</sup> Appellant's Appendix, page 105a (Tr, 30).

<sup>19</sup> Those other lot owners were the named defendants in this action, but are not parties to the appellate proceedings.

<sup>20</sup> Appellee's Appendix, pages 1b-2b (Judgment).

complaint in 1998 seeking a declaration that they had a permanent right of use of the alleys as lot owners.<sup>21</sup> The defendants, in turn, filed a counterclaim for a declaration that the plaintiffs had no remaining rights in the alleys, and that the lakeside park had never been properly dedicated.<sup>22</sup> Each of the defendants sought the exclusive right to any land lying between their lots and the water's edge—a right that the plaintiffs had also claimed by virtue of their deeds to the water's edge.

The trial court granted the plaintiffs' motion for partial summary disposition, declaring that the plaintiffs, as lot owners within the platted area, had the right to use the vacated alleys. Additionally, the trial court rejected the defendants' claim that any dedication of the lakeside park, or frontage, had been revoked.<sup>23</sup> After an amended counterclaim was filed, the trial court again granted partial summary disposition to the plaintiffs, ruling that, under the dedication in the plat, the lot owners enjoyed the right to use the park—despite the fact that the dedication clearly *omitted* the word “use.”<sup>24</sup> The trial court indicated that it would proceed to trial on the issue of the permissible scope of that use, as well as a separate claim by one of the plaintiffs for acquiescence or adverse possession of the alley between her cottage and Mrs. Hirschman's cottage.<sup>25</sup>

After a two-day bench trial, the trial court concluded that the plaintiffs were entitled to use the alleys for access to the water. The court also concluded that, by virtue of being lot owners within the plat, the plaintiffs also possessed the right to use

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<sup>21</sup> Appellant's Appendix, page 14a (Complaint).

<sup>22</sup> Appellant's Appendix, pages 35a, 89a (Counter-Claim, Amended Counter-Claim).

<sup>23</sup> Appellant's Appendix, pages 86a-87a (Order granting partial summary disposition).

<sup>24</sup> Appellant's Appendix, pages 97a-99a (Order granting partial summary disposition).

the parks dedicated in the plat:

The Plaintiffs have property rights in this area designated as the lakeside park due to the fact that they are lot owners in the plat. Traditionally and historically, the lakeside park adjoining Ms. Hirschman's property has been used as a common beach area for swimming, sunbathing, picnicking, etc. The parties, through this traditional and historical use, have defined the scope and definition of the lakeside park.<sup>25</sup>

The trial court held that the beach in front of Mrs. Hirschman's cottage could be used by the lot owners and their family, friends, and invited guests for such traditional and recreational uses as swimming, sunbathing, and picnicking. The court also allowed one fire pit to be maintained and used on the beach. However, the use of the beach in front of all the other lots owners on lakeside park was restricted to strolling. And the use of the riverside park was restricted to strolling and fishing. Similarly, the trial court allowed the alley next to Mrs. Hirschman's property to be used for both pedestrian and vehicular traffic, but restricted the use of every other alley to foot traffic, only. The trial court's justification for this disparate treatment was not the language of the plat, but the manner in which the property had been used for the last several years.

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<sup>25</sup> This claim was rejected by the trial court, and has not been appealed.

<sup>26</sup> Appellant's Appendix, pages 213a-221a (Opinion and Order). The "historical use" the trial court referred to consisted of evidence that for about thirty years, Defendant and her predecessors had allowed invited neighbors to use the property. Such permissive use, no matter how "historical," cannot ripen into any vested property rights.

Court of Appeals Ruling:

On appeal, Mrs. Hirschman argued that the dedication of the parks to the several lot owners was invalid, because it was not a public dedication. The Court of Appeals agreed, relying on the recently decided case of *Martin v Redmond*, 248 Mich App 59; 638 NW2d 142 (2001), which this Court has granted leave to appeal and has ordered to be submitted along with the instant case. For the reasons set forth in this brief, Defendant/Appellee Betty Hirschman urges this Court to affirm the Court of Appeals ruling.



## ARGUMENT

**A dedication of land, by definition, must be to the public, and not to private individuals. A “private” dedication is therefore an oxymoron, and conveys no rights. Here, the plat provided that “the parks are hereby dedicated to the owners of the several lots.” The Court of Appeals correctly ruled that this dedication conveyed no rights to Plaintiffs.**

**Standard of Review:** Whether a private dedication is legally valid is a question of law. This Court reviews questions of law de novo. *Oxley v Dep’t of Military Affairs*, 460 Mich 536, 541; 597 NW2d 89 (1999).

**Discussion:** The Court of Appeals did not err by ruling that the private dedication was invalid as a matter of law. A dedication, by definition, requires an appropriation of land to the public. Because the plattors dedicated the parks to the lot owners, not the public, the dedication was ineffective, and conveyed nothing to the lot owners. Even if a court were inclined to stretch a private dedication into a grant of an easement, the dedication in this case clearly conveyed no easement—it attempted to dedicate the parks to the several lot owners, while it also dedicated the alleys to the use of the public. Thus, the plattors intentionally omitted the word “use” from the private dedication. It cannot be construed as an easement, but only as a failed attempt to convey the parks to the several lot owners by way of a dedication.

All dedications, in order to be valid, must be dedications to the public, and not to



private individuals. Indeed, a dedication, by definition, is “an appropriation of land to a public use by the owner.” *Attorney General v Cheboygan Co Rd Comm*, 217 Mich App 83, 88; 550 NW2d 821 (1996) (emphasis added). See also Black’s Law Dictionary, 6<sup>th</sup> ed, p 412 (defining “Dedication” as “[t]he appropriation of land, or an easement therein, by the owner, for the use of the public, and accepted for such use by or on behalf of the public.”). As recited in American Jurisprudence, “The essence of a dedication is that it is for the use of the public at large.” 23 Am Jur 2d, Dedication, § 5. “There can be no dedication to private uses . . . .” *Id.* Thus, a dedication to private individuals, such as the one at issue in this case, is inimical to the very concept of a dedication.

Thus, as a matter of law, the plat dedication conveyed no rights to any of the plaintiffs, because a platlor cannot dedicate land on a plat to private individuals. See *Kraushaar v Bunny Run Realty Co*, 298 Mich 233; 298 NW 514 (1941). In *Kraushaar*, the plaintiffs were lot purchasers in a plat that contained the following dedication: “drives, roads, boulevards and terraces as shown on the plat are hereby dedicated to the use of lot owners of plat . . . .” *Id.*, 241. The plat also contained a beach, which was being used by the public. The lot owners sued to prevent the public from using the beach, claiming a separate contractual right to use it as a private beach. One of the lot owners’ legal claims was that the private dedication of the roads in the plat allowed them to obtain an injunction against the public use of those roads to access the beach. However, this Court rejected that argument, ruling that the plat dedication was ineffective. This Court recognized that the essence of a dedication is that it be for the



public:

There is no such thing as a dedication between the owner and individuals. The public must be a party to every dedication. In fact, the essence of a dedication to public uses is that it shall be for the use of the public at large. . . . [I]f from the nature of the user it must be confined to a few individuals, the idea of dedication is negated. [*Id.*, 241-242, quoting 16 Am Jur 359.]

See also *Detroit Edison Co v Detroit*, 332 Mich 348, 353; 51 NW2d 245 (1952) (applying *Kraushaar* to reject a utility company's claim that an easement utility was a private and not a public dedication).

In this case, the dedication contained in the plat is as follows: “[T]he streets and alleys as shown on said plat are hereby dedicated to the use of the public and the parks are hereby dedicated to the owners of the several lots.” The first part of that dedication is a facially valid public dedication. However, the dedication of the parks to the lot owners is facially invalid, because the public is not a party to that dedication. A dedication, by its very nature, involves a transfer of property rights to the public. Moreover, the dedication in this case fails for another reason—it is ambiguous. The plat depicts the parks as being fifty feet wide, “more or less.” This ambiguity renders the entire dedication suspect.

The Court of Appeals correctly ruled that the plat dedication in this case was ineffective and conveyed nothing to the plaintiffs. The panel relied on the recently decided case of *Martin v Redmond*, 248 Mich App 59; 638 NW2d 142 (2001), *lv gtd.* In *Martin*, which in turn relied on *Kraushaar*, *supra*, a platted subdivision specified that

“Outlot A is reserved for the use of the lot owners . . . .” *Id.*, 60. The defendants argued that this constituted a dedication of the outlot to the lot owners within the subdivision. The Court of Appeals rejected this argument, holding that “a thorough review of the case law convinces us that, before and after the platting and subdivision statutes were enacted, ‘dedication’ clearly referred to an appropriation of land for *public use*.” *Id.*, 65 (emphasis in original). The Court quoted the above passage from *Kraushaar*, and noted that *Kraushaar* had been followed in other cases and was consistent with the general property-law principles set forth in the American Jurisprudence encyclopedia. *Id.*, 68-69.

Relying on *Martin*, the Court of Appeals panel in the instant case held that the trial court erred when it afforded rights to the plaintiffs by virtue of their status as lot owners. The plat in this case contained a dedication of the parks to the several lot owners—not to the public. Therefore, the dedication was invalid, and conveyed nothing to the plaintiffs. Defendant recognizes that this Court has granted leave in *Martin* and has ordered that it be submitted along with the instant case, for this Court’s consideration of whether private dedications are valid. In any event, the dedication in *Martin* is different from the dedication in the Yequagamak plat in one very important respect—in *Martin*, the dedication was to the **use** of the lot owners, while the dedication in the instant case simply dedicates the parks **to** the lot owners—not to the “use” of the lot owners.<sup>27</sup> Therefore, even if a private dedication for the “use” of other lot owners is

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<sup>27</sup> Additionally, in *Martin*, the panel interpreted MCL 560.253(1) to prevent private dedications, when such an interpretation seems contrary to the plain language of that

held to convey some private right of use, similar to an easement, the dedication in this case conveys no such right of “use,” but instead purports to convey the property itself. Such a private dedication was invalid, and conveyed nothing.

The plaintiffs rely on a line of cases they claim to be inconsistent with *Kraushaar*, but a close examination of those cases reveals they do not contradict the clear legal principle that a dedication must be to the public in order to be valid. For example, *Kirchen v Remenga*, 291 Mich 94; 288 NW 344 (1939) and *Westveer v Ainsworth*, 279 Mich 580; 273 NW 275 (1937), both deal with the same plat, and both cases hold that, where a public dedication is not accepted, the lot owners within the subdivision nonetheless retain a right of use in the dedicated areas. In *Kirchen*, *supra* at 100-102, the plattor dedicated park areas to the public. After the public failed to accept the dedication, the plattor’s assignees asserted a right to resume their ownership and control over the park areas in the plat as against the claims of the individual lot owners who were attempting to preserve their preexisting right to use the parks by reference to the public dedication. This Court held that, once the plattors dedicate land to the public and sell lots in reference to the plat, the dedication is irrevocable as to the individual lot owners, even if the public does not accept the dedication. *Id.*, 102-104. See also *Westveer*, *supra* at 583 (holding that a public dedication becomes irrevocable as to the individual lot owners when lots are sold by reference to the plat, even if the public never accepts the dedication).

Both of these cases clearly involved a *public* dedication, and are distinguishable  
statute. In this case, however, that statute does not apply.

from the instant case, in which the dedication was expressly to the several lot owners, not the public. Therefore, their holdings are not inconsistent with *Kraushaar*. Indeed, the same plat at issue in *Westveer* and *Kirchen* was before the Court of Appeals in *West Michigan Park Ass'n of Ottawa Beach v Dep't of Conservation*, 2 Mich App 254, 267; 139 NW2d 758 (1966), and in that decision, the Court of Appeals relied on *Kraushaar* for the proposition that “there cannot be a dedication for private purposes or enjoyment.” In *West Michigan Park Ass'n*, the lot owners were relying on their previously adjudicated private rights under the dedication, to prevent public use of the dedicated parks. The Court of Appeals held that the dedication had effected a transfer of the fee to Ottawa County in trust for the public, and rejected the lot owners’ claim. *Id.*, 264. Thus, *Kirchen* and *Westveer* do not call into question the ruling of *Kraushaar* that private dedications are invalid.

The principal case on which the plaintiffs rely to support the validity of private dedications is *Feldman v Monroe Twp Bd*, 51 Mich App 752, 754; 216 NW2d 628 (1974), in which the Court of Appeals held that “[a] private dedication is ‘irrevocable’ upon the sale of lots by reference to the plat and the grantees of the dedicators are bound by the dedication.” However, the panel in *Feldman* was relying on *Kirchen* and *Westveer*, and clearly misconstrued those two cases. *Kirchen* and *Westveer* both involved the same plat, which contained a public dedication, not a private one. Therefore, the ruling in *Feldman* is based on a misreading of two cases, and is contrary to established principles of jurisprudence. The panel in *Martin* recognized this, and

specifically disavowed the *Feldman* decision as not supported by the caselaw. The Court of Appeals held as follows:

Unfortunately, the undisciplined use of the term dedication has led to some confusing and conflicting statements of the law. Specifically, in *Feldman v Monroe Twp Bd*, 51 Mich App 752, 754-755; 216 NW2d 628 (1974), this Court appeared to, without analysis, equate a private dedication with a statutory, public dedication. We reject this conclusion in *Feldman* because it is simply not supported by the cases cited, which refer only to private rights stemming from an intent to dedicate land to the *public* or for public purposes. [*Martin, supra*, 248 Mich App at 69-70.]

Thus, the plaintiffs' reliance on *Feldman* is as misplaced as was that Court's analysis.

The distinction between public dedications (which can give rise to private rights of the lot owners) and private dedications (which cannot give rise to any such rights), is an important one. A public dedication is facially valid, and the public authority has a reasonable time in which to accept the dedication. See *Kraus v Michigan Dep't of Commerce*, 451 Mich 414, 420; 547 NW2d 870 (1996). Prior to the acceptance, the platlor can revoke the offer to dedicate at any time. *Kirchen, supra* at 103.<sup>28</sup> However, the platlor is estopped from asserting the revocation of the dedication as against the other lot owners within the plat. *Id.*, 104. In other words, the lot owners are entitled to rely on the validity of the public dedication. By contrast, a dedication to private

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<sup>28</sup> Indeed, the actions of the platlors in taking their property to the water's edge upon dissolution of the corporation constituted a revocation of the offered dedication. See *Kraus, supra* at 431 ("Offers are deemed withdrawn when the proprietors use the property in a way that is inconsistent with public ownership.").

individuals is not a “dedication” at all. A “private dedication” is an oxymoron. Therefore, such a dedication is facially invalid, and the lot owners may not reasonably rely on it. Because the private rights arising from a public dedication are based on a theory of estoppel, those private rights cannot arise from a private dedication, on which no one should reasonably rely.

The plaintiffs claim that this Court unequivocally affirmed lot owners’ rights in a private park dedication in *Schurtz v Wescott*, 286 Mich 691, 693; 282 NW 870 (1938). However, in that case, the plat depicted several streets that were specifically dedicated to the public, but contained two “parks” that “were not so dedicated.” The case does not appear to contain an expressly private dedication, but instead simply a designation on a plat of “north park” and “south park.” *Id.*, 694. The Court held that the sale of lots making reference to the plat estopped a claim that the dedication had never been accepted. But this Court did not *unequivocally* hold that private dedications were valid, and the record of that case does not appear to apply to the issue squarely presented by this case—whether the plattors’ express dedication to the lot owners and not to the public is a valid dedication. In short, *Schurtz* provides little guidance on this issue.

According to the plaintiffs, the proper analysis for this case is set forth in *Little v Kin*, 249 Mich App 502, 504-505, 511-512; 644 NW2d 375 (2002), in which the Court of Appeals held that the scope of an easement to backlot owners of traditionally riparian rights must be determined by the intent of the plattors. The decision in *Little* relied on *Thies v Howland*, 424 Mich 282; 380 NW2d 463 (1986) and *Dobie v Morrison*, 227 Mich

App 536; 575 NW2d 817 (1998), which also involved the issue of the extent of rights under an easement. Again, the plaintiffs attempt to cast *Little* as contrary to *Martin*, but the plaintiffs ignore that both opinions were authored by the same judge. Moreover, *Little* and the cases it relied on involved an issue different from that presented in this case. *Little* concerned the ability of a riparian lot owner to grant an easement for riparian rights to backlot owners. The rights were conveyed pursuant to an easement, not a dedication.

However, the decision in *Dobie* did involve a “dedication” of a park bordering a lake. The dedication was to “the use of the owners of lots in this plat which have no lake frontage.” *Id.*, 537. The panel construed that dedication as conveying an easement, rather than a grant of fee ownership rights. *Id.*, 540. This ruling is arguably another example of what the panel in *Martin* described as an undisciplined distinction between the legal theories. However, any discrepancy in the *Dobie* decision does not affect the outcome of this case. The plat of Yequagamak contained a dedication of the parks to the several owners—it did not contain a dedication to the *use* of the owners. Because the plat did contain a dedication of the streets and alleys to the public *use*, it is apparent that the plattors intentionally omitted the word “use” from the dedication of the parks. Thus, the private dedication of the parks is incapable of being construed as granting an easement (as in the *Dobie* case). Absent the grant of an easement, the private dedication fails under *Kraushaar*.

Moreover, the intent of the plattors should only govern where they have made a

legal conveyance. A party can intend to convey real property to someone, but unless they implement that intent through legal means—a written deed complying with the statute of frauds—their intent means nothing. Similarly, where the plat dedication of the parks was facially invalid because it did not include the public, the intent of the plattors cannot overcome that legal deficiency. The intent of the plattors is only pertinent when attempting to define the scope of a valid grant of property rights—it cannot be a substitute for legal prerequisites for conveying such rights.

The plaintiffs also contend that the acceptance of the plat by the Auditor General is prima facie evidence that the plat, including the private dedication, was legal and valid. However, the plaintiffs misapprehend the statute on which they rely. 1887 PA 309, reproduced in Appellant's Appendix,<sup>29</sup> provides that a recorded plat, approved by the Auditor General, is prima facie evidence of compliance "with the provisions of this act."<sup>30</sup> That act sets forth several technical requirements for what must be contained in a plat, but the act does not declare private dedications to be valid, does not set forth any standards for private dedications, and does not even mention private dedications. Therefore, the plaintiffs' reliance on that statute is misplaced.

Defendant must also address the plaintiffs' improper requests for relief. The plaintiffs urge this Court, even if it declares the dedication to be invalid, to reinstate the trial court's opinion, allowing them the right to use the dedicated areas, on theories of equitable estoppel, acquiescence, laches, and judicial estoppel. This request is not

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<sup>29</sup> Appellant's Appendix, pages 246a-248a.

<sup>30</sup> Appellant's Appendix, page 248a.



appropriate at this procedural juncture of the case. If this Court declares that the dedication in this case was not valid, it should simply affirm the Court of Appeals opinion and ruling. Moreover, if this Court vacates the Court of Appeals opinion and ruling, this Court should remand to the Court of Appeals for consideration of Defendant's remaining two issues, which were not resolved in light of the resolution of the dedication issue. The plaintiffs' request to have this Court vacate the Court of Appeals opinion and affirm the trial court's ruling on the two remaining issues is inappropriate.

The Court of Appeals was correct in this case. The dedication to the several lot owners was ineffective and conveyed nothing to the plaintiffs. The clear holding of this Court in *Kraushaar*, recently reiterated by the Court of Appeals in *Martin*, is that private dedications are invalid. There are some cases that hold that an unaccepted public dedication sometimes creates irrevocable rights of use in the lot owners, but these cases involve public dedications, not private ones. And the one case in which the Court of Appeals upheld a private dedication—*Feldman*—mistakenly applied this Court's precedents and has been subsequently disavowed by the Court of Appeals. Further, cases involving the scope of a riparian easement granted to backlot owners do not apply to a private dedication to the several lot owners (which expressly is not to the "use" of those lot owners). Therefore, this Court should affirm the longstanding rule that a dedication is, by its very nature, a dedication to the public. A "private" dedication is no dedication at all. In some circumstances a court might be able to construe such a



dedication as a grant of an easement, but that cannot be the case here, where the dedication was not for the **use** of the owners, but rather **to** the owners. The dedication was invalid, and the Court of Appeals decision should be affirmed.



## RELIEF REQUESTED

A dedication, by definition, is a transfer of rights to the public. Therefore, a “private” dedication, such as the one in this case, is legally and facially invalid. The plat dedication of the parks to the several lot owners conveyed no rights whatsoever. Therefore, the trial court erred by granting rights to the plaintiffs under the dedication. Further, this ruling was inequitable, because it gave the plaintiffs the right to use Defendant’s property, in violation of her right to use and enjoy her property without unreasonable interference or intrusion. The fact that Defendant and her predecessor Bertine Bullock were sociable people who frequently invited neighbors over cannot constitute a basis, in law or equity, for taking away Defendant’s property rights. The crucial stick in the “bundle” of property rights is the right to exclude others. The trial court deprived Mrs. Hirschman of that important right, on the basis of a plat dedication that was clearly invalid. The Court of Appeals was correct to reverse this decision.

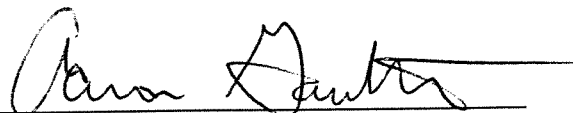
For these reasons, Defendant-Appellee Betty Hirschman respectfully requests that this Honorable Court AFFIRM the Court of Appeals opinion in this case. Alternatively, if this Court determines the dedication in this case to be valid, it should remand to the Court of Appeals for consideration of Defendant’s remaining issues, which were not addressed by the panel, given its ruling on the private dedication.



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Respectfully submitted,

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